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10

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 STEVEN YOUNG,

14 CASE NO.: 4:18-cv-01931-DMR

15 Plaintiff,

16 v.
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**ANSWER OF OFFICER DANIEL
CANCELLA**

CITY OF EAST PALO ALTO POLICE
OFFICERS DANIEL CANCELLA and
STEVE HUMRICH and DOES 1 - 50,

Defendants.

Complaint filed: 03/29/18

COMES NOW DEFENDANT OFFICER DANIEL CANCELLA (hereinafter "Defendant") in response to Plaintiff STEVEN YOUNG's Complaint Under the Civil Rights Act, 42 U.S.C. Section 1983 [Doc. 1]. Defendants hereby admit, deny, and allege as follows:

PARTIES

1. Answering ¶ 1 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

2. Answering ¶ 2 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

3. Answering ¶ 3 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

4. Answering ¶ 4 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

5. Answering ¶ 5 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

6. Answering ¶ 6 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

7. Answering ¶ 7 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

8. Answering ¶ 8 of the Compliant, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the remaining allegations contained therein.

COMMON ALLEGATIONS

9. Answering ¶ 9 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

10. Answering ¶ 10 of the Complaint, Defendant denies generally and specifically the allegations contained therein.

11. Answering ¶ 11 of the Complaint, Defendant denies generally and specifically the allegations contained therein.

12. Answering ¶ 12 of the Complaint, Defendant denies generally and specifically the allegations contained therein.

13. Answering ¶ 13 of the Complaint, Defendant denies generally and specifically the allegations contained therein.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
(42 U.S.C. SECTION 1983)

(2 U.S.C. SECTION 1933)
**(FOR VIOLATION OF PLAINTIFF'S FOURTH AND FOURTEENTH
AMENDMENT RIGHTS AND AGAINST DEFENDANTS
OFFICERS DANIEL CANCELLA AND STEVE HUMRICH)**

14. Answering ¶ 14 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

15. Answering ¶ 15 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

16. Answering ¶ 16 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

17. Answering ¶ 17 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

18. Answering ¶ 18 of the Complaint, Defendants lack sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein.

SECOND CAUSE OF ACTION
(42 U.S.C. SECTION 1983)
Monell's Ruling

19. Answering ¶ 19 of the Complaint, Defendant denies generally and specifically the allegations contained therein; Defendant is not a public entity.

20. Answering ¶ 20 of the Complaint, Defendant denies generally and specifically the allegations contained therein; Defendant is not a public entity.

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21. Answering ¶ 21 of the Complaint, Defendant denies generally and specifically the allegations contained therein; Defendant is not a public entity.

22. Answering ¶ 22 of the Complaint, Defendant denies generally and specifically the allegations contained therein; Defendant is not a public entity.

23. Answering ¶ 23 of the Complaint, Defendant denies generally and specifically the allegations contained therein; Defendant is not a public entity.

THIRD CAUSE OF ACTION (CONVERSION)

24. Answering ¶ 24 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

25. Answering ¶ 25 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

26. Answering ¶ 26 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

FOURTH CAUSE OF ACTION
(BATTERY)

27. Answering ¶ 27 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

28. Answering ¶ 28 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

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29. Answering ¶ 29 of the Complaint, Defendant denies generally and specifically the allegations contained therein and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

**FIFTH CAUSE OF ACTION
(NEGLIGENCE)**

30. Answering ¶ 30 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

31. Answering ¶ 31 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

32. Answering ¶ 32 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

SIXTH CAUSE OF ACTION
(INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS)

33. Answering ¶ 33 of the Complaint, Defendant lacks sufficient information and belief upon which to base an answer, and for that reason, denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

34. Answering ¶ 34 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

35. Answering ¶ 35 of the Complaint, Defendant denies generally and specifically the allegations contained therein, and also denies that this action is stated on the ground that the plaintiff failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

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SEVENTH CAUSE OF ACTION
(NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS)

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3 36. Answering ¶ 36 of the Complaint, Defendant denies generally and specifically the
4 allegations contained therein, and also denies that this action is stated on the ground that the plaintiff
5 failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

6 37. Answering ¶ 37 of the Complaint, Defendant denies generally and specifically the
7 allegations contained therein, and also denies that this action is stated on the ground that the plaintiff
8 failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

9 38. Answering ¶ 38 of the Complaint, Defendant denies generally and specifically the
10 allegations contained therein, and also denies that this action is stated on the ground that the plaintiff
11 failed to file a government tort claim as required pursuant to Government Code Section 911 et seq.

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STATEMENT OF DAMAGES

13 39. Answering unnumbered of the Complaint, Defendant denies generally and specifically
14 the allegations contained therein.

15 40. Answering ¶ 39 of the Complaint, Defendant denies generally and specifically the
16 allegations contained therein.

17 41. Answering ¶ 40 of the Complaint, Defendant denies generally and specifically the
18 allegations contained therein.

19 42. Answering ¶ 41 of the Complaint, Defendant denies generally and specifically the
20 allegations contained therein.

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JURY TRIAL DEMANDED

22 43. Answering ¶ 42 of the Complaint, Defendant hereby demands a jury trial.

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PRAYER

24 1. Defendant denies specifically and generally that Plaintiff is entitled to general damages;

25 2. Defendant denies specifically and generally that Plaintiff is entitled to special damages,
26 including but not limited to past, present and/or future wages loss, income and medical expenses;

27 3. Defendant denies specifically and generally that Plaintiff is entitled to attorneys' fees
28 pursuant to statute or otherwise;

4. Defendant denies specifically and generally that Plaintiff is entitled to costs of suit;
5. Defendant denies specifically and generally that Plaintiff is entitled to punitive and exemplary damages in any amount;

6. Defendant denies specifically and generally that Plaintiff is entitled to prejudgment interest as a matter of law;

7. Defendant denies specifically and generally that Plaintiffs are entitled to any other such relief.

AFFIRMATIVE DEFENSES

AS A FIRST AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action thereof, this answering defendant alleges that said Complaint fails to state a claim upon which relief can be granted.

AS A SECOND AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action thereof, this answering defendant alleges that the injuries and damages Plaintiff complains of, if any, resulted from the acts and/or omissions of others, and without any fault on the part of this answering defendant.

AS A THIRD AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action thereof, this answering defendant alleges that his actions were undertaken in good faith and with the reasonable belief that said actions were valid, necessary and constitutionally proper.

AS A FOURTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action thereof, this answering defendant alleges that his acts were privileged under applicable statutes and case law.

AS A FIFTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action thereof, this answering defendant alleges that Plaintiff has failed to allege and/or has not stated facts sufficient to show an affirmative link between Defendant and the acts which allegedly violated Plaintiff's rights.

AS A SIXTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action thereof, this answering defendant alleges that Plaintiff failed to mitigate his damages, if any.

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1 AS A SEVENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
2 action thereof, this answering defendant alleges that Plaintiff's Complaint is barred by the applicable
3 Statute of Limitations.

4 AS AN EIGHTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
5 action thereof, this answering defendant alleges that the Complaint is barred by the equitable doctrine
6 of laches.

7 AS A NINTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
8 thereof, this answering defendant alleges that the Complaint is barred by the equitable doctrine of
9 unclean hands.

10 AS A TENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
11 thereof, this answering defendant alleges that the Complaint is barred by the equitable doctrine of
12 estoppel.

13 AS AN ELEVENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause
14 of action thereof, this answering defendant alleges that plaintiff has waived their rights to bring this
15 action against them.

16 AS A TWELFTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
17 thereof, this answering defendant alleges that Plaintiff at all times had actual and/or constructive
18 knowledge of the circumstances upon which Plaintiff's Complaint is based. Plaintiff expressly accepted
19 those circumstances and thereby ratified the conduct of which Plaintiff complains.

20 AS A THIRTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause
21 of action thereof, this answering defendant alleges that any damages sustained by plaintiff were either
22 fully or in part the fault of others, whether that fault be the proximate result of negligence, strict
23 liability, breach of warranty, breach of contract, or any other type of fault caused by persons, firms,
24 corporations or entities, other than this answering defendant, and that said negligence or fault
25 comparatively reduces the percentage of fault or negligence, if any, by this answering defendant.

26 AS A FOURTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
27 action thereof, this answering defendant alleges that decedent was himself careless and negligent in and
28 about the matters alleged in the Complaint and that said carelessness and negligence on decedent's own

1 part proximately contributed to Plaintiff's loss and damage, if any there were. Decedent's contributory
2 negligence shall reduce any and all damages sustained by said Plaintiff.

3 AS A FIFTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
4 action thereof, this answering defendant alleges that decedent was actively negligent in and about the
5 matters alleged in the Complaint and are thereby barred from any recovery.

6 AS A SIXTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
7 action thereof, this answering defendant are informed and believes and thereon allege that decedent
8 and plaintiffs, with full appreciation of the particular risks involved, nevertheless knowingly and
9 voluntarily assumed the risks and hazards of the incident complained of and the damages, if any,
10 resulting therefrom.

11 AS A SEVENTEENTH AFFIRMATIVE DEFENSE to the Complaint, Defendant is informed
12 and believes and thereon alleges that Defendant's conduct was not motivated by evil motive or intent,
13 nor reckless or callous indifference to the rights of others, and thus punitive damages are not
14 awardable against Defendant.

15 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE to the Complaint, Defendant is informed
16 and believes and thereon alleges that defendant is entitled to a absolute and qualified immunity
17 because defendant did not violate clearly established statutory or constitutional rights of which a
18 reasonable person would have been aware.

19 AS A NINETEENTH AFFIRMATIVE DEFENSE to the Complaint, Defendant is informed
20 and believes and thereon alleges that Defendant officer cannot commit a constitutional violation
21 against Plaintiff caused by a policy, custom, or practice because he is not a public entity, and therefore
22 no *Monell* claim is stated against him.

23 AS A TWENTIETH AFFIRMATIVE DEFENSE to the Complaint, Defendant is informed and
24 believes and thereon alleges that plaintiff failed to exhaust his administrative remedies including, but
25 not limited to, those pursuant to Government Code §900 through §935, et seq.

26 AS A TWENTY-FIRST AFFIRMATIVE DEFENSE, Defendants is informed, believes, and
27 thereon alleges that Defendant is absolutely immune from liability for all California state law causes
28 of action pursuant to California Government Code Sections 815.2, 821.6, and all other relevant

1 provisions of said code, or other California statutory and/or case law, which immunize Defendant from
2 civil liability for acts falling within their scope of work as public employees.

3 AS A TWENTY-SECOND AFFIRMATIVE DEFENSE, defendant alleges that the defendant
4 acted with probable cause at all relevant times.

5 AS A TWENTY-THIRD AFFIRMATIVE DEFENSE, defendants alleges that defendant had
6 reasonable suspicion to detain plaintiff.

7 AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE, defendant alleges that he used
8 reasonable force in his attempt to detain and/or arrest decedent.

9 AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE, defendant alleges that the actions
10 undertaken by the officer was objectively reasonable given the totality of the circumstances.

11 AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE, defendant alleges that the defendant is
12 entitled to qualified immunity.

13 AS A TWENTY-SEVENTH AFFIRMATIVE DEFENSE, defendant alleges that said
14 complaint, and each alleged cause of action thereof, fails to state facts sufficient to support an award
15 of attorney's fees, costs and expenses against this answering defendant.

16 AS A TWENTY-EIGHTH AFFIRMATIVE DEFENSE, this answering defendant alleges that
17 the individual Defendant, pursuant to Government Code Section 815.2, is entitled to immunity from
18 the PLAINTIFF by virtue of the provisions of the Government Code of the State of California,
19 Sections 800 through 1000, including but not limited to Section 820.2, 820.4, 820.6, 820.8, 821,
20 821.6, 822.2, 830 et seq., 830.4, 830.8 and 845.8.

21 AS A TWENTY-NINTH AFFIRMATIVE DEFENSE, this answering defendant alleges that
22 plaintiff failed to follow the claim presentation procedure pursuant to the California Tort Claims Act.

23 AS A THIRTIETH AFFIRMATIVE DEFENSE, this answering defendant alleges that the
24 complained of conduct is privileged under California Civil Code §47 and applicable case law.

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1 WHEREFORE, this answering defendant prays that Plaintiff take nothing from this Defendant
2 by way of his Complaint, for attorneys' fees and costs of suit incurred herein, and for such other and
3 further relief as the court deems just and proper.

4 Defendants demand a jury trial.
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6 DATED: June 14, 2018

CLAPP, MORONEY, VUCINICH,
BEEMAN and SCHELEY

7 By: _____
8

9 JEFFREY M. VUCINICH, ESQ.
10 ELIZABETH D. RHODES, ESQ.
11 Attorneys for Defendants
OFFICER DANIEL CANCELLA
and OFFICER STEVE HUMRICH

1 **YOUNG v. CITY OF EAST PALO ALTO OFFICERS DANIEL CANCILLA and STEVE**
2 **HUMRICH, et al.**

2 U.S. District Court, Northern District of California Case No. 4:18-cv-01931-DMR

3 **PROOF OF SERVICE - Civil**
4 *[Code of Civ. Proc. §§ 1011, 1013, 1031a, 2015.5]*

5 **METHOD OF SERVICE:**

6 **By Personal Service** **By Mail** **By Overnight Delivery**
7 **By Messenger Service** **By Facsimile** **By E-Mail/Electronic Transmission**

8 1. I am a citizen of the United States and am employed in the County of San Mateo, State of
9 California. I am over the age of 18 years and not a party to the within action.
10 2. My place of employment is 1111 Bayhill Drive, Suite 300, San Bruno, CA 94066.
11 3. On the date set forth below, I caused to be served a true and correct copy of the document
12 described as:

13 **ANSWER OF OFFICER DANIEL CANCILLA**

14 4. I served the document on the persons below, as follows:

15 M. Alieu Iscandari, Esq.
16 Iscandari & Associates
17 303 Hegenberger Road, Suite 311
18 Oakland, CA 94621
19 Tel: (510) 606-9062
20 Fax: (510) 803-5684
21 email: izcan79@gmail.com
22 **Attorneys for Plaintiff STEVEN YOUNG**

23 5. The document was served by the following means (specify):

24 a. **BY PERSONAL SERVICE.** I personally delivered the documents to the
25 persons at the addresses listed in item 4. (1) For a party represented by an
26 attorney, delivery was made to the attorney or at the attorney's office by leaving
27 the documents in an envelope or package clearly labeled to identify the
28 attorney being served with a receptionist or an individual in charge of the
29 office. (2) For a party, delivery was made to the party or by leaving the
30 documents at the party's residence with some person not less than 18 years of
31 age between the hours of eight in the morning and six in the evening.

32 b. **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope
33 or package addressed to the persons at the addresses in item 4 and (specify
34 one):

35 (1) deposited the sealed envelope with the United States Postal Services,
36 with the postage fully prepaid.

37 (2) placed the envelope for collection and mailing, following our ordinary
38 business practices. I am readily familiar with this business's practice
39 for collecting and processing correspondence for mailing. On the same

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day that correspondence is placed for collection and mailing, it is
deposited in the ordinary course of business with the United States
Postal Service, in a sealed envelope with postage fully prepaid.

I am resident or employed in the County where the mailing occurred. The envelope or package
was placed in the mail at San Bruno, California, County of San Mateo.

- c. **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope
or package provided by an overnight delivery carrier and addressed to the
persons at the addresses in item 4. I place the envelope or package for
collection and overnight delivery at an office or a regularly utilized drop box
of the overnight delivery carrier.
- d. **BY MESSENGER SERVICE.** I served the documents by placing them in
an envelope or package addressed to the persons at the addresses listed in item
4 and providing them to a professional messenger service for service.
- e. **BY FAX TRANSMISSION.** Based on an agreement of the parties to accept
service by fax transmission, I faxed the documents to the persons at the fax
numbers listed in item 4. No error was reported by the fax machine that I used.
A copy of the record of the fax transmission, which I printed out, is attached.
- f. **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court
order or an agreement of the parties to accept service by e-mail or electronic
transmission, I caused the documents to be sent to the persons at the email
addresses listed in item 4. I did not receive, within a reasonable time after the
transmission, any electronic message or other indication that the transmission
was unsuccessful.

(State) I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

(Federal) I declare that I am employed in the offices of a member of the bar of this court at
whose direction this service was made. I declare under penalty of perjury that the foregoing is true
and correct.

Executed on June 14, 2018, at San Bruno, California.



Claudia Gomez

Proof of Service - Civil
[Code of Civ. Proc. §§ 1011, 1013, 1013a, 2015.5]